

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nathaniel Flack	Team: Squad #3	CCRB Case #: 201607728	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 09/09/2016 9:00 AM	Location of Incident: Boston Road and Waring Avenue	Precinct: 49	18 Mo. SOL 3/9/2018	EO SOL 3/9/2018	
Date/Time CV Reported Fri, 09/09/2016 10:30 AM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Fri, 09/09/2016 11:03 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Miguel Pierre	09253	944897	049 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jose Caceres	15029	938144	049 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Miguel Pierre	Abuse: Police Officer Miguel Pierre stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Miguel Pierre	Discourtesy: Police Officer Miguel Pierre spoke discourteously to § 87(2)(b)	
C.POM Miguel Pierre	Abuse: Police Officer Miguel Pierre threatened § 87(2)(b) with the use of force.	
D.POM Miguel Pierre	Off. Language: Police Officer Miguel Pierre made remarks to § 87(2)(b) based upon race or ethnicity.	

Case Summary

§ 87(2)(b) filed this complaint at the 49th Precinct Stationhouse on September 9, 2016. It was received by the CCRB on September 9, 2016.

At approximately 9 am on September 9, 2016, § 87(2)(b) was driving on Boston Road near Waring Avenue, in the Bronx. When he changed lanes to circumvent an unrelated traffic stop, he was pulled over by PO Pierre (**Allegation A**). After pulling over, § 87(2)(b) told PO Pierre that he did not commit a violation, and did not provide his driver's license for one or two minutes, during which time PO Pierre said, "Give me your fucking license," and threatened to "drag § 87(2)(b) out of the fucking car" and "beat [his] ass" (**Allegations B and C**). § 87(2)(b) subsequently gave PO Pierre his license, and PO Pierre returned to his RMP to write § 87(2)(b) a summons for making an unsafe lane change. When PO Pierre returned to § 87(2)(b)'s vehicle to give him the summons, an exchange ensued during which PO Pierre said to § 87(2)(b) "You know what happens with cops in your country?...You know what they would have done there, right?" (**Allegation D**). PO Pierre presented the summons to § 87(2)(b) and gave him permission to leave the scene.

§ 87(2)(b) provided a recording (Board Review 01) which captures audio from the portion of the incident after PO Pierre returned to § 87(2)(b)'s car to deliver the summons.



Snag.mp4

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation § 87(2)(b).
- As of November 15, 2016, § 87(2)(b) has not filed a Notice of Claim regarding this incident.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint. § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
- This is the ninth CCRB complaint filed against PO Pierre, in nine years of service. He has previously been the subject of 17 allegations, none of which have been substantiated.
§ 87(2)(g)

Potential Issues

- The investigation spoke to § 87(2)(b) the other motorist who was stopped, but he did not recall the incident.

Findings and Recommendations

Allegation Not Pleaded

- § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation A: Abuse of Authority – Police Officer Miguel Pierre stopped the vehicle in which § 87(2)(b) was an occupant.

In his CCRB interview, § 87(2)(b) said that at approximately 9 am on September 9, 2016, he was driving north on Boston Road in the Bronx, near Waring Avenue. He was in the rightmost of two northbound lanes on Boston Road, when he encountered a police car parked in his lane. § 87(2)(b) waited for an opening in the left lane before signaling and merging. As he did this, PO Pierre, who was standing in the road while engaged in another car stop, said through § 87(2)(b)'s open window, "What's wrong? Are you in a hurry?" He told § 87(2)(b) to pull over, which § 87(2)(b) did. § 87(2)(b) said that he did not commit any violation, and that PO Pierre pulled him over solely because he held a grudge against him after an earlier encounter between them. PO Pierre said to § 87(2)(b) during the incident that he did not care if § 87(2)(b) filed a CCRB complaint. § 87(2)(b) first said that this was before he was pulled over, but later said it was after he was pulled over. § 87(2)(b) believed this statement was in reference to a complaint § 87(2)(b) attempted to file after their earlier encounter.

§ 87(2)(b)'s September 13, 2016 telephone statement to the CCRB (Board Review 04) and his September 9, 2016 written statement at the 49th Precinct Stationhouse (Board Review 03) were generally consistent with his interview.

PO Pierre said in his CCRB interview (Board Review 05) that at approximately 9 am on September 9, 2016, he had stopped a vehicle in the right northbound lane of Boston Road. As he walked back to the RMP after taking information from the operator of this vehicle, he saw § 87(2)(b) merging from the right lane, "almost causing an accident." PO Pierre told § 87(2)(b) to pull over so that he could write him a summons. PO Pierre recalled that during the incident, § 87(2)(b) had referred to a prior encounter between them. PO Pierre testified that he had no recollection of this prior incident or of § 87(2)(b) because he pulls over hundreds of cars per week.

PO Caceres said in his interview (Board Review 06) that he was getting information from a driver who he had stopped on Boston Road when PO Pierre, who was standing next to him, told § 87(2)(b) to pull over. PO Caceres could not see what caused PO Pierre to pull § 87(2)(b) over because he was focused on the driver he had stopped. PO Caceres was not aware of any prior encounter between PO Pierre and § 87(2)(b) and PO Pierre never mentioned any such incident.

§ 87(2)(b) was issued summons number § 87(2)(b) by PO Pierre on September 9, 2016, for making an unsafe lane change (Board Review 07).

A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such a lane until the driver has first ascertained that such movement can be made with safety. New York Vehicle and Traffic Law, §1128 (Board Review 08). Police may stop a vehicle based upon a reasonable suspicion that the driver or occupants of the vehicle have committed a crime. People v. Taylor, 31 A.D.3d 1141 (Board Review 09).

§ 87(2)(g)
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Allegation B: Discourtesy – Police Officer Miguel Pierre spoke discourteously to § 87(2)(b)

Allegation C: Abuse of Authority – Police Officer Miguel Pierre threatened § 87(2)(b) with the use of force.

§ 87(2)(b) said in his interview that after he was pulled over on Boston Road, PO Pierre asked him through the window for his driver's license. § 87(2)(b) asked PO Pierre why he had been pulled over. PO Pierre did not answer this question, and responded, "Give me your fucking license." § 87(2)(b) asked PO Pierre, "What's the problem sir?" PO Pierre said, "I will drag you out of the car, and beat your ass." § 87(2)(b) provided his license because he was intimidated, and PO Pierre went back to the RMP to write the summons. § 87(2)(b) initially said that PO Pierre asked for his license multiple times before he was threatened and provided it, but later said that he was only asked once. After PO Pierre returned to § 87(2)(b)'s car with the summons, they had a further conversation during which § 87(2)(b) told PO Pierre that he was not allowed to say he would drag him from the car and "beat [his] ass." § 87(2)(b) said PO Pierre responded that he was allowed to say whatever he wanted.

§ 87(2)(b)'s intake statement was generally consistent with his interview. He said that after disputing that any violation had occurred, PO Pierre told him, "Give me your license or I will drag you out of the car and beat you ass. That's a promise, not a threat." § 87(2)(b) did not refer to these allegations in his telephone statement.

PO Pierre testified that after stopping § 87(2)(b) he approached his window, told him why he had been stopped, and asked for his driver's license. § 87(2)(b) responded that he had not done anything and refused to provide the license. PO Pierre responded, "That's not how we work," and told § 87(2)(b) he was required to provide identification, or he would have to be detained and brought to the stationhouse to verify his information. § 87(2)(b) continued to verbally protest that he had not committed a violation for one or two minutes, but then provided his license. When PO Pierre returned to § 87(2)(b)'s vehicle after writing the summons, § 87(2)(b) called him "very unprofessional." PO Pierre told § 87(2)(b) he respected his opinion and told him he could challenge the summons in court before allowing him to drive away. PO Pierre did not recall any additional comments being made by either himself or § 87(2)(b). PO Pierre testified that he did not use profanity when speaking to § 87(2)(b) and that he did not say he would drag

§ 87(2)(b) out of the car and “beat his ass,” say anything to that effect, or make any other threats of force.

PO Caceres testified that he could not hear anything that PO Pierre or § 87(2)(b) said during the incident. PO Caceres returned to the RMP very soon after § 87(2)(b) was first pulled over, and he could not hear anything PO Pierre said due to noise from the road. Later in the incident, PO Caceres stood by the passenger side window of § 87(2)(b)'s vehicle, while PO Pierre conversed with § 87(2)(b) through the driver's side window. He could not hear anything being said during this portion of the incident due to noise from the road.

The audio recording only captures the portion of the incident after PO Pierre returned to § 87(2)(b)'s vehicle to give him the summons. At 7 seconds, § 87(2)(b) says, “Why would you say you would drag me out of the fucking car?” PO Pierre says, “Just like you can say it.” At 15 seconds, § 87(2)(b) says, “You’re not allowed to say, ‘I’m going to drag you out of the fucking car.’” PO Pierre responds, “I’m allowed to say whatever I want.” At 50 seconds, § 87(2)(b) says, “Do not say you’re going to drag me out of the fucking car.” PO Pierre responds, “If you refuse to provide information.” At 57 seconds, § 87(2)(b) says, “You can’t say you’re going to drag me out of the fucking car.” PO Pierre responds, “That was a citation, that was a promise, that wasn’t a actually threat (sic).” At 1:11, PO Pierre says, “I asked you twice, the third time I would have done that.”

When played the audio during his interview, PO Pierre denied that he ever said he would “drag § 87(2)(b) out of the fucking car.” He said that § 87(2)(b) had been “putting words in [his] mouth.” PO Pierre testified that when he referred on the recording to a “promise,” he was not acknowledging having said earlier in the incident that he would “drag § 87(2)(b) out of the fucking car.”

Officers are required to treat citizens with courtesy and civility. PG 200-02 (Board Review 10). During a stressful street encounter, an officer may use limited profanity where the need to gain compliance or maintain control of an incident is present. PD v. Court, OATH Index 78667/03 (Board Review 11).

Gratuitous comments which serve no purpose other than to intimidate constitute an abuse of a police officer's authority. PD v. Briscoe, OATH Index No. 1328/00 (Board Review 12). Officers may use only the reasonable force necessary to gain custody or control of a suspect, and only when it is not safe or appropriate to gain voluntary compliance through de-escalation techniques. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject. De-escalation is defined as taking action to stabilize a situation so that more time, resources, and/or options become available, and to reduce or eliminate the necessity to use force. PG 221-01 (Board Review 13).

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§ 87(2)(g)

Allegation D: Offensive Language – Police Officer Miguel Pierre made remarks to § 87(2)(b) based upon race or ethnicity.

During his interview, § 87(2)(b) played the recording into the record, on which PO Pierre can be heard saying, “You know what happens with cops in your country?” § 87(2)(b) said that to his knowledge, PO Pierre was not aware of his national background. § 87(2)(b) did not independently refer to this remark prior to playing the recording.

In the initial complaint form he filed at the 49th Precinct on the day of the incident, § 87(2)(b) alleged that PO Pierre said after stopping him, “This is not your country.”

§ 87(2)(b) did not specifically refer to this allegation in his phone statement.

PO Pierre testified that he did not say to § 87(2)(b) “You know what happens with cops in your country?” He testified that he did not make any remarks referencing § 87(2)(b)’s nationality or ethnicity. He said he was not aware of § 87(2)(b)’s national background and never discussed the subject with § 87(2)(b).

PO Caceres said he was standing at § 87(2)(b)’s passenger side window when PO Pierre delivered the summons. He testified that he did not hear anything said by PO Pierre or § 87(2)(b) due to noise from the adjacent road and the fact that § 87(2)(b)’s passenger window was closed.

On the recording, PO Pierre says at 36 seconds, “You know what happens with cops in your country?” PO Pierre adds, “You know what they would have done there, right?” § 87(2)(b) responds, “This is my country. I’m a U.S. citizen. You need to understand that.” § 87(2)(b)’s national background is not otherwise discussed or referenced on the recording.

When played this section of the recording, PO Pierre said that he did not recall making the remark, or recall any context or anything else about it.

Officers are prohibited from making disrespectful remarks regarding another person's ethnicity or race. PG 203-10 (Board Review 14).

§ 87(2)(g) [Redacted]
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Squad: 3

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date